IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15147 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SATIBEN NOGHABHAI PARMAR - Petitioner(s)

Versus

ADIVASI ASHRAM SHALA & 6 - Respondent(s)

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Appearance :

MR VL THAKKAR for Petitioner(s) : 1,
MR BY MANKAD for Respondent(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 2,3,6,7,
MS REETA CHANDARANA, AGP for Respondent(s) : 4,5.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 07/03/2006

ORAL JUDGMENT

1.In the present petition, the petitioner who is a retired employee of Ashramshala run by respondent no.1 has prayed for the direction for payment of pension,

provident fund, gratuity, leave encashment etc. from the date of her retirement.

2.The petition was initially disposed of by the Learned Single Judge by order dated 26-11-2004 primarily on the ground of delay. The petitioner carried the order in appeal and Letters Patent Bench by order dated 07-03-2005 overruled the said contention of the respondents and remanded the matter for consideration on merits.

3.Accordingly, the petition has been kept for further hearing before this Court. Rule having already been issued on 10-01-2006.

4.The learned advocate for the petitioner submitted that petitioner being an employee of Ashramshala should be treated at par with all other non-teaching staff members of Government School discharging similar duties. He submitted that petitioner is in fact employee of the State Government. He drew my attention to Government Resolution dated 25-11-1988 by which certain provisions with respect to pay scale of the employees of Ashramshala have been made. In particular

he drew my attention to clause 13 of the circular wherein it is provided that Ashramshala employees shall get all benefits available as per Gujarat Secondary Education Act. He therefore, contended that the post retiral benefits of the petitioner such as pension, provident fund. etc., cannot be withheld.

5. On the other hand, learned AGP Ms. Reeta Chandarana and learned advocate Shri B.Y. Mankad appearing for the respondents submitted that petitioner is not a Government Servant. That the petitioner cannot seek parity with other Government Servants for the purpose of pensionary benefits since there is no pension scheme applicable to the employees of Ashramshala. It is contended that petitioner was employed in Ashramshala run by a private trust. The learned advocates bring to my notice a decision of Learned Single Judge of this Court dated 04-02-2006 rendered in Special Civil Application No. 11651/2004 wherein these issues have been discussed at length and concluded by Learned Single Judge.

6. Upon perusal of the said decision, it is clear that all demands made by the petitioner in the present petition

under identical situation have been considered by Learned Single Judge in the said decision. The learned Judge was pleased to come to the conclusion that Ashramshala employees are not the employees of the State Government. It was further held that they are not entitled to receive pension since there is no scheme applicable providing for pension. With respect to the pay scale however, learned Judge was pleased to come to the conclusion that staff of the Ashramshala would have pay parity with teaching and non-teaching staff of the private primary schools. Accordingly, it was directed that staff of Ashramshala will be entitled to the benefits of Government Resolution dated 16-08-1994 at par with the staff of private primary schools.

7. In view of the above decision, I find that the petitioner has not made out a case for being granted pensionary benefits. It may be noted that resolution dated 25-11-1988 on which the petitioner has placed reliance was also considered by Learned Single Judge while giving the decision dated 04-02-2006. In that view of the matter, it is not possible to uphold the contention of the petitioner. The prayer for release of pensionary and other post retiral benefits therefore,

cannot be granted. It is however clarified that respondents have also not opposed the case of the petitioner for pay parity with the non-teaching staff of other private primary schools. If the petitioner has been denied such benefit in any manner, the petitioner would have right to point out the same to the authorities and the authorities are expected to rectify error, if any detected.

8. In the result, subject to above observations, the petition fails, is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi,J.)

(raghu)